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CHONG YOON HUAT

v.

TOKIO MARINE LIFE INSURANCE (MALAYSIA) BHD

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HIGH COURT MALAYA, KUALA LUMPUR
VT SINGHAM J
[CIVIL SUIT NO: S-22-784-2005]
23 NOVEMBER 2010

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CONTRACT: Termination - Termination of appointment - Termination of plaintiff's appointment as agent and district manager - Whether wrongful termination - Whether termination in accordance with express terms of appointment agreements - Whether termination valid and lawful

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The plaintiff's appointment as agent under a Standard Agency Agreement and as District Manager under a District Manager's Agreement was terminated by the defendant. The plaintiff alleged that he was unjustly and summarily terminated. He contended that he had occupied a fiduciary position and as such he could not be terminated without sufficient cause and denied an opportunity to be heard. He was a top earning agent and was injured in his business, reputation and standing in the insurance industry by the defendant's summary termination. Further, by such summary termination, the plaintiff claimed that the defendant had appropriated all the clientele, business and business opportunities that he had built over the years preceding the wrongful termination. He also contended that it was an implied term of the contract of the defendant's engagement of the plaintiff that the plaintiff would (1) occupy and continue to occupy the said position and procure and maintain clientele for the defendant and benefit from the clientele so procured; and (2) the defendant would not terminate the plaintiff's said position save and except for serious misconduct on the part of the plaintiff and upon sufficient prior inquiry to ascertain such misconduct. He therefore claimed for damages and a liquidated sum of RM1,288,555. On the other hand, the defendant claimed that the plaintiff's termination of both the agreements was pursuant to express terms therein and was valid and lawful. Further, the plaintiff could not import terms into the contract which were inconsistent with its express terms relating to termination. The plaintiff had 16 other related cases and it was ordered that the decision of this court in the present case on liability would bind all of them.

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Held (dismissing the plaintiff's claim with costs):

- (1) On the totality of the evidence and considering the cumulative effect of the nature of the transaction carried out by the plaintiff and the correspondences between the parties, there could not be any implied

- terms or terms imported into both the agreements as contended by the plaintiff. The relationship between the plaintiff and the defendant was based on the two agreements and the parties were bound by their express terms which were private contracts. (para 13) A
- (2) On the facts and surrounding circumstances, this was not a case where the implied terms as proposed and argued by the plaintiff was necessary to give effect to the agreements and neither was it an obligation implied by law or arising out of necessity. In fact, the agreements respectively provided for the mode of termination and constituted binding agreements between the plaintiff and the defendant. (para 14) B C
- (3) Even if the defendant had to give reasons for the termination of the agreements which the defendant was not obliged to do under their express terms, the defendant had reason or just cause for the termination as there was a drastic drop in productivity in 2002 and the plaintiff had not given any satisfactory answer for the drastic drop. Accordingly, and upon considering the warning letters dated 5 April 2002, 13 April 2002, 26 April 2002 and 30 May 2005 issued to the plaintiff by the defendant, and considering the reply, the termination was justified under the circumstances. The defendant had complied with the express terms of the agreements when the letter of termination was issued to the plaintiff. (para 16) D E
- (4) The defendant had rightfully forwarded the outstanding payment of RM235,805 owing to the plaintiff in respect of all the benefits and payments due and accrued to the plaintiff prior to the date of termination. It followed that the termination of the plaintiff's appointments pursuant to the agreements was lawful and valid and in accordance with the express terms and conditions of the agreements. The plaintiff was not entitled to the benefits or commission for the period after the date of the termination. The plaintiff was also not entitled to any Long Association benefit. Additionally, the plaintiff was not entitled to the payment of commission on policies effected by him prior to his termination as an agent and any other payments as the manager and to continue on such policies on the renewal thereof as he no longer performed his duties as the agent or manager and pursuant to the express terms of the agreements. The plaintiff had since joined another insurance company. (paras 19, 23 & 25) F G H
- [Plaintiff's claim against defendant in respect of 16 remaining cases dismissed with costs.]* I

- A Case(s) referred to:**
ABDA Airfreight Sdn Bhd v. Sistem Penerbangan Malaysia Bhd [2001] 8 CLJ 1 HC (**refd**)
American International Assurance Company Ltd v. Koh Yen Bee [2002] 4 CLJ 49 CA (**refd**)
Arklow Investment Ltd v. Ian Duart Maclean [2000] 1 WLR 594 (**refd**)
- B** *Bank of Credit And Commerce International SA v. Ali* [2002] 1 AC 251 (**refd**)
Bristol & West Building Society v. Mothew [1966] 4 All ER 698 (**refd**)
British & Beningtons Ltd v. North Western Chachar Tea Co Ltd [1923] AC 48 (**refd**)
Broome v. Pardess Co-operative Society of Orange Growers Ltd [1940] 1 All ER 603 (**refd**)
- C** *Comptior Commercial Anversois and Power, Son & Co* [1920] 1 KB 868 (**refd**)
In re Berker Sportcraft Limited's Agreement [1947] 177 LT 420 (**refd**)
Industrial & Agricultural Distribution Sdn Bhd v. Golden Sands Construction Sdn Bhd [1993] 1 LNS 96 HC (**refd**)
Malik v. BCCI [1997] 3 All ER 1 (**refd**)
- D** *Reigate v. Union Manufacturing Co (Rams-Bottom) Ltd And Elton Copdyeing Co Ltd* [1918] 1 KB 592 (**refd**)
Sababuni (Sandakan) Sdn Bhd v. Datuk Yap Pak Leong [1998] 3 CLJ 503 FC (**refd**)
Sandhu v. Gill [2005] EWCA CIV 1297 (**refd**)
Tamplin (FA) Steamship Co Ltd v. Anglo-Mexican Petroleum Products Co Ltd [1916] 2 AC 397 (**refd**)
- E** *Tindok Besar Estate Sdn Bhd v. Tingar Co* [1979] 1 LNS 119 FC (**refd**)
Trollope & Colls Ltd v. North West Metropolitan Regional Hospital Board [1973] 2 All ER 260 (**refd**)
Yap Nyo Nyok v. Bath Pharmacy Sdn Bhd [1993] 3 CLJ 188 HC (**refd**)
- F** *For the plaintiff - John SN Fam (Freda Santiago with him); M/s SN Fam & Co*
For the defendant - Brendan Siva; M/s Kadir Andri & Partners

Reported by Usha Thiagarajah

G JUDGMENT

VT Singham J:

- H** [1] The plaintiff's claim against the defendant is for damages and liquidated sum being RM1,288,555 for having allegedly unjustly and summarily terminated the plaintiff's appointment under the standard agency agreement as the agent and under the district manager's agreement as the district manager of the defendant. The plaintiff's claim is based on a written agreement namely, the standard agency agreement dated 1 April 1998 and district manager's agreement dated 15 April 1999
- I** executed by both the plaintiff and the defendant.

[2] As the interpretation of cl. 20(a) of the standard agency agreement and cl. 8 of the district manager's agreement are crucial in arriving at a just decision in the present case, the relevant clauses are reproduced below: A

Clause 20(a) of the standard agency agreement dated 1 April 1998 states: B

Automatic Termination of Agency

This agreement shall be automatically terminated upon the occurrence of any of the following events: C

- (a) by either party upon giving the other party 15 days' written notice;
- (b) the death of the Agent;
- (c) the Agent fails to submit to the Company any acceptable and paid for new business for a consecutive period of 90 days; D

If this agreement is terminated by the death of the Agent, his estate shall only be entitled to the first year and renewal commissions due up to the date of death and thereafter shall not be entitled to any further commission thereof and that payment made to such estate shall be reduced by the amount of any indebtedness due to Company. E

[emphasis added].

Clause 8 of the district manager's agreement dated 15 April 1999 states: F

Either party may terminate this Agreement at any time by giving to the other party fifteen (15) days' notice in writing. **Termination of the District Manager's Standard Agency Agreement with the Company will automatically terminate this Agreement.** [emphasis added]. G

[3] By letter dated 11 June 2002, the defendant by giving fifteen days notice to the plaintiff terminated the plaintiff's appointment as an agent pursuant to cl. 20(a) of the standard agency agreement dated 1 April 1998 and as the district manager pursuant to cl. 8 of the district manager's agreement dated 15 April 1999 with effect from 27 June 2002. By a notice dated 26 October 2004, the plaintiff through his solicitor Messrs SN Fam & Co demanded payment from the defendant. The defendant denied the plaintiff's claim by their solicitor's letter dated 22 November 2004. H

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A [4] For the purpose of easy reference, it is important to include in this judgment, three relevant letters dated 11 June 2002, 26 October 2004 and 22 November 2004 which is part of the agreed facts (encl. 48):

B Notice of termination dated 11.6.2002:

Asia Life

Asia Life (M) Berhad

Head Office:

Asia Insurance Building

C 3rd - 5th Floor, No. 2, Jalan Raja Chulan

P.O. Box 10456, 50200 Kuala Lumpur

Tel : 03-2070 2511

Fax : 03-2072 3742

Our Ref : AGT/1654/5/02

D Date : 11 June 2002

Mr Chong Yoon Huat

No. 61, 6/155A

E 57000 Bukit Jalil

Kuala Lumpur

Dear Sir

Re: Standard Agency Agreement dated 1 April 1998

F District Manager's Agreement dated 15 April 1999

1. We refer to the above two agreements.

G 2. Pursuant to Clause 20(a) of the Standard Agency Agreement, we hereby give you 15 days' written notice of the Company's intention to terminate your Standard Agency Agreement. Upon expire of the 15 days, the Standard Agency Agreement will automatically terminate.

H 3. We also draw your attention to Clause 8 of the District Manager's Agreement whereby it is stated that the termination of the Standard Agency Agreement will automatically terminate the District Manager's Agreement. In any case, the company also gives you 15 days' written notice of the company's intention to terminate the District Manager's Agreement.

I 4. To ensure that all loose ends are tied up including accounts, kindly contact the undersigned in order that arrangements may be made.

Yours faithfully,

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ASIA LIFE (M) BERHAD

Signed

Jack Lee
Agency Manager

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JL/ysm

cc Mr Chua San Kuang, Southern Regional Manager
Mr C Kumaran, Central Regional Manager

C

Notice of demand dated 26.10.2004 reads:

Our reference : 1-01-MS-99-3121

Date : 26.10.2004

Asia Life Insurance (M) Bhd
3rd Floor, Asia Life Insurance Building
2, Jalan Raja Chulan
50200 Kuala Lumpur

A.R Registered

D

Dear Sirs,

Claims by Chong Yoon Huat

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1. We are instructed by our client, the abovenamed Chong Yoon Huat who was until 11.6.2002, the District Manager pursuant to an Agreement dated 15.4.1999 and Standard Agency Agreement dated 1.4.1998.

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2. Our client states that you had wrongfully and without cause terminated our client's agency and position with your company.

3. Without prejudice to our client's claims for wrongful termination our client states pursuant to the said agreements our client was and is entitled to the following which are due and payable irrespective of the said termination:

G

- (a) overriding commission on all policies effected and renewed by the agents for 2002 under him and he had the agents for the 2nd to 4th year renewals of the policies amounting to RM346,485.02 as per your statement issued to the agents

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- (b) commission for policies effected and renewed by our client as an agent under the Standard Agency Agreement dated 1st April 1998 since 2001 for four years amounting to RM56,490.35

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- (c) long association benefit under your undertaking in a statement dated December 2001 of RM209,083.99;

- A** (d) 4th year overriding income of RM85,330.45 for business done (by the agents under our client) based on group production first year premium for 1999 amounting to RM3,794,894.86 at 1.75% from the following
- B** (i) unit manager 1 (Chua Siok Kim - Agent Code 708611)
RM55,752.56 (RM3,185,860.35)
- (ii) unit manager 2 (Lim Kim Chua - Agent Code 708640)
RM1,664.09 (RM95,090.75)
- (iii) unit manager 3 (Lee Hai Him - Agent Code 710645)
RM3,652.56 (RM208,717.90)
- C** and RM24,261.25 being 5% on direct group production of RM485,224.90
- D** (e) 3rd and 4th year overriding commission of RM287,564.28 due in 2002 and 2003 (for business done in 2000) derived from the business effected by the following:
- | | For 2002 | For 2003 |
|---------------|--------------|--------------|
| Chua Seok Kim | RM140,471.66 | RM117,059.71 |
| | @ 2.10% | @ 1.75% |
| Lim Kim Chua | RM1,615.11 | RM1,345.93 |
| | @ 2.10% | @ 1.75% |
| Lim Jai Jim | RM6,324.59 | RM5,285.50 |
| | @ 2.10% | @ 1.75% |
- E**
- F** (f) overriding commission on direct group production for business done in 2000 as follows:
- | Year | Gross (RM) | Rate (p.a) | Amt due (RM) |
|-----------|------------|------------|--------------|
| (i) 2002 | 308,875.70 | 6% | 18,532.54 |
| (ii) 2003 | 398,875.70 | 5% | 15,5543.79 |
- G**
- (g) overriding commission on direct production for business done in 2001 as follows:
- H** For 2002
- | Name | Gross(RM) | Rate(pa) | Amt due(RM) |
|---------------|--------------|----------|-------------|
| Chua Seok Kim | 6,474,472.85 | 3.50% | 226,606.55 |
| Lim Kim Chua | 107,323.35 | 3.50% | 3,756.32 |
| Lee Lai Him | 458,276.90 | 3.50% | 16,039.69 |
- I**

For 2003

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Chua Seok Kim	6,474,472.85	2.10%	135,963.93
Lim Kim Chua	107,323.35	2.10%	2,253.79
Lee Lai Him	458,372.90	2.10%	9,623.81

For 2004

B

Chua Seok Kim	6,474,472.85	1.75%	113,303.27
Lim Kim Chua	107,323.35	1.75%	1,878.16
Lee Lai Him	458,276.90	1.75%	8,019.85

- (h) direct group production income of RM59,522.40 for the years 2002, 2003 and 2004 for business done in 2001 as follows:

C

	Year	Gross (RM)	Rate (p.a)	Amt due (RM)
(i)	2002	283,440.00	10	28,344.00
(ii)	2003	283,440.00	6	17,006.40
(iii)	2004	283,440.00	5	14,172.00

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- (i) overriding commission due in 2003, 2004 and 2005 (for business done up to May 2002) derived from the business effected by Chua Seok Kim

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	Year	Gross(RM)	Rate(%)	Amt due(RM)
(i)	2003	557,245.85	3.5	19,503.60
(ii)	2004	557,245.85	2.10	11,702.16
(iii)	2005	557,245.85	1.75	9,751.80

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- (j) direct group production income of RM19,272.90 for the year 2003, 2004 and 2005 for business group done up to May 2002 as follows:

G

	Year	Gross(RM)	Rate(%)	Amt due(RM)
(i)	2003	47,007.10	10	4,700.71
(ii)	2004	47,007.10	6	2,820.42
(iii)	2005	27,007.10	5	2,350.35

H**I**

- A** (k) year end and special bonus on premium income from the business done by Chua Seok Kim for year 2002

	Bonus	Gross(RM)	Rate(%)	Amt due(RM)
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	(i) year-end	557,245.85	3	16,717.37
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B	(ii) special	557,245.85	1	5,572.45
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4. Further our client was entitled to the following benefits:

- C** (a) for achieving the assigned quota for the CEO challenge for 2001 at 2% which worked out in real terms to RM146,485.02;

(b) for setting up an office in Petaling Utama Six, PJ since 1999 under the CEO Challenge for Kuala Lumpur Office allowance for a period of three years amounting to RM20,000.00;

- D** (c) office maintenance for Malacca (agency) office for the period January - June 2002 amounting to (RM5,000.00 x 6) RM30,000.00

E 5. As to the wrongful termination our client contends that he occupied a fiduciary position and as such he cannot be terminated without sufficient cause and an opportunity to be heard which he was denied. Further, our client, being top earning agent in the country, has been injured in his business, reputation and standing in the insurance industry by your summary termination. Further, by such termination you have appropriated to yourself all the clientele, business and business opportunities that our client had built over the past ten years preceding the wrongful termination. Our client is thus entitled to damages for such wrongful termination.

F 6. TAKE NOTICE that unless you pay

- G** (a) the said liquidated sum of RM1,288,555.70 together with interest at 8% p.a. from the dates they were due; and

(b) damages for the wrongful termination to be agreed and such negotiations to commence

H within seven (7) days of receipt hereof we have instructions to institute legal proceedings against you for the recovery thereof.

7. Kindly acknowledge receipt,

Yours faithfully,
SN FAM & CO
Signed

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Defendant's solicitors' letter dated 22 November 2004 reads:

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Our reference : 7.63.143

Date : 22 November 2004

SN Fam & Co

8-1 & 2, Jalan Radin Anum

Bandar Baru Seri Petaling

57000 Kuala Lumpur

By Hand

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Dear Sirs,

Re: Chua Siok Kim & Chong Yoon Huat

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1. This is supplemental to our letter dated 10.11.2004. This is also in response to both your letters dated 26.10.2004 written on behalf of the abovecaptioned individuals.

2. There has been a series of correspondence between Asia and your clients which addresses the same issues raised in your letters under reply. For completeness sake, we enclose herewith the said correspondence:

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(i) In respect of Chong Yoon Huat:

Asia's letters dated 5.4.2002, 26.4.2002, 13.5.2002, 30.5.2002, 11.6.2002 and 10.7.2002;

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(ii) In respect of Chua Siok Kim:

Asia's letter dated 5.4.2002, 26.4.2002, 11.6.2002, 27.6.2002 and 12.7.2002.

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3. As you can see from the correspondence, the same issues you have now raised have already been dealt with by Asia directly with your clients over 2 years ago.

4. Asia's position in gist is as follows:

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(i) your clients' productivity as agents waned in 2002 and they were warned and given an opportunity to improve their performances;

(ii) unfortunately, your clients failed to perform up to Asia's expectation;

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(iii) Asia exercised its right under clause 20(a) of the Standard Agency Agreement between your clients and Asia, and terminated the agreement by giving the requisite 15 days' written notice;

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(iv) at the same time, Asia pursuant to clause 8 of the District Manager's Agreement (for Chong Yoon Huat) and clause 8 of the Senior Unit Manager's Agreement (for Chua Siok

A Kim), whereby it is stated that the termination of the Standard Agency Agreement will automatically terminate the District Manager's Agreement and Senior Unit Manager's Agreement respectively, also gave 15 days' written notice to your clients to terminate these agreements;

B (v) notwithstanding paragraph (iii) and (iv), there is no requirement for Asia (as the party terminating the agreement) to show any breach of the agreements on the part of your clients. Neither is there any requirement for a reason for termination, good or otherwise, to be given. Asia has merely exercised its contractual rights. For your information, the unilateral right to terminate is given to both parties by the Standard Agency Agreement; and

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(vi) Asia denies that it has in any way been inequitable or that it has acted oppressively or in a discriminatory manner. At all times, Asia has merely acted in a manner consistent with its rights under the Standard Agency Agreement.

D

5. Asia's right to terminate as provided by clause 20(a) of the Standard Agency Agreement is unilateral in character and exercisable at the sole discretion of Asia. A similar clause was upheld and given effect in *American International Assurance Co Ltd v. Koh Yen Bee* [2002] 4 CLJ 49.

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[5] However, both parties have at the outset of the trial and pursuant to the order of court dated 30 June 2010 (encl. 39) agreed that the decision of this court will be only on the issue of liability and shall bind upon sixteen other cases, namely:

- F**
- (a) S22-783-2005;
 - (b) S22-241-2006;
 - (c) S22-245-2006;
 - (d) S22-238-2006;
- G**
- (e) S22-235-2006;
 - (f) S22-236-2006;
 - (g) S22-233-2006;
 - (h) S22-232-2006;
- H**
- (i) S22-230-2006;
 - (j) S22-229-2006;
 - (k) S22-240-2006;
 - (l) S22-239-2006;
- I**
- (m) S22-237-2006;
 - (n) S22-234-2006;
 - (o) S22-244-2006;
 - (p) S22-243-2006

which was ordered to be transferred to this court from other courts and to be heard together with the present case. As the order of court dated 8 June 2006 which supposedly had consolidated the other cases with the present case pursuant to “saman dalam kamar” dated 16 January 2006 (encl. 5) was not clear as to the terms and mode of proceeding with the present trial, the plaintiff’s solicitor had applied to vary the terms of the said order. By consent, this court granted the said application for the variation of the terms of the said order dated 8 June 2006.

The consent order of court dated 30 June 2010 (encl. 39) reads:

PERINTAH

ATAS PERMOHONAN lisan pihak Plaintiff dan Defendan dalam tindakan ini DAN SETELAH MENDENGAR

Encik John Fam (Puan Freda Santhiago bersamanya) peguam bagi pihak Plaintiff dan Encik Brendan Navin Siva peguam bagi pihak Defendan MAKA ADALAH DIPERINTAHKAN SECARA PERSETUJUAN bahawa berikutan dengan perintah-perintah Mahkamah untuk memindahkan kes-kes yang disenaraikan di dalam Lampiran A perintah ini, untuk tujuan didengar bersama dengan tindakan ini adalah dipersetujui antara pihak Plaintiff-Plaintif (di dalam kes-kes yang disenaraikan di dalam Lampiran A) dan Defendan bahawa:

1. Perbicaraan penuh tindakan ini akan dijalankan atas isu liabiliti sahaja dan kes-kes yang disenaraikan dalam Lampiran A perintah ini ditangguhkan sementara menunggu pelupusan perbicaraan penuh dan keputusan tindakan ini;
2. Keputusan Mahkamah terhadap liabiliti dalam tindakan ini akan mengikat pihak-pihak dalam kes-kes yang disenaraikan di dalam Lampiran A perintah ini dan [penekanan oleh Mahkamah ini]
3. Sekiranya Mahkamah membuat keputusan yang memihak Plaintiff maka taksiran ganti rugi akan dibicarakan oleh Penolong Kanan Pendaftar Mahkamah Tinggi bagi tindakan ini dan bagi setiap kes yang disenaraikan di dalam Lampiran A perintah ini masing-masing.

Bertarikh pada 30 haribulan Jun 2010

Tandatangan

Nurul Nadia binti Abdul Razak
Penolong Kanan Pendaftar
Mahkamah Tinggi
Kuala Lumpur

A [6] As stated above, the plaintiff has alleged that the termination of the plaintiff's appointment as an agent of the defendant pursuant to the standard agency agreement dated 1 April 1998 and as the district manager of the defendant pursuant the district manager's agreement dated 15 April 1999 is invalid and unlawful. The reliefs sought by the plaintiff are as follows:

- B**
- (a) general damages;
 - (b) the sum of RM1,288,555.70;
 - C** (c) interest at 8% p.a. from the dates the respective sum was due;
 - (d) such further or other reliefs; and
 - (e) costs.

D [7] The plaintiff has also claimed that notwithstanding the said termination, he is entitled to payment, commission and remuneration on policies effected by him or other agent under him prior to the said termination, particulars of which are:

- E**
- (a) Overriding commission on all policies effected and renewed by the agents under the plaintiff for year 2002 for the 2nd to 4th year renewals of such policies amounting to RM346,485.02;
 - (b) Commission on policies effected and renewed by the plaintiff, as agent, under the standard agency agreement since 2001 for four years amounting to RM56,490.35;

- F**
- (c) 4th year overriding income of RM85,330.45 for business done (by the agents under the plaintiff as district manager) based on group production on first year premium for 1999 amounting to RM3,974,894.86 at 1.75% from or in respect of the following:

- G**
- (i) Unit Manager 1 (Chua Siok Kim) Agent Code 708611 - RM55,752.56 (RM3,185,860.35)

- (ii) Unit Manager 2 (Lee Kim Chua) Agent Code 708640 - RM1,664.09 (RM95,090.75);

- H**
- (iii) Unit Manager 3 (Lee Lai Him) Agent Code 710645 - RM3,652.56 (RM208,717.90).

- (d) 3rd and 4th year overriding commission of RM287,564.28 due in 2002 and 2003 for business done in 2000 derived for and payable for the business affected as follows:

I	Agent	For 2002	For 2003
	Chua Siok Kim	RM140,471.66 @ 2.10%	RM117,059.71 @ 1.75%

Lee Kim Chua	RM1,615.11 @ 2.10%	RM1,345.93 @ 1.75%	A
Lim Lai Him	RM6,324.59 @ 2.10%	RM5,285.50 @ 1.75%	
(e) Overriding commission on direct group production for business done in 2000 as follows:			B
Year	Gross(RM)	Rate(%)	Amt due(RM)
(i) 2002	308,875.70	6%	RM18,532.54
(ii) 2003	398,875.70	5%	RM15,543.79
(f) Overriding commission on direct production for business done in 2001 as follows:			
(i) RM246,402.56 Payable in 2001			D
Name	Gross(RM)	Rate (p.a)	Amt due(RM)
Chua Seok Kim	6,474,472.85	3.50%	226,606.55
Lim Kim Chua	107,323.35	3.50%	3,756.32
Lee Lai Him	458,276.90	3.50%	16,039.69
(ii) RM147,841.53 Payable in 2002			E
Chua Seok Kim	6,474,472.85	2.10%	135,963.93
Lim Kim Chua	107,323.35	2.10%	2,253.79
Lee Lai Him	458,372.90	2.10%	9,623.81
(iii) RM123,201.28 Payable in 2003			F
Chua Seok Kim	6,474,472.85	1.75%	113,303.27
Lim Kim Chua	107,323.35	1.75%	1,878.16
Lee Lai Him	458,276.90	1.75%	8,019.85
(g) Direct group production income of RM59,522.40 for the years 2002, 2003 and 2004 for business done in 2001 as follows:			G
Year	Gross (RM)	Rate (%)	Amount due (RM)
2002	283,440.00	10	28,334.00
2003	283,440.00	6	17,006.40
2004	283,440.00	5	14,172.00
			H
			I

- A** (h) Overriding commission dues in 2003, 2004 and 2005 (for business done up to May 2002) derived from the business effected by Chua Seok Kim:

	Year	Gross(RM)	Rate(%)	Amount due(RM)
B	2003	557,245.85	3.5	19,503.60
	2004	557,245.85	2.10	11,702.16
	2005	557,245.85	1.75	9,751.80

- C** (i) Direct group production income of RM19,272.90 for the years 2003, 2004 and 2005 for business done up to May 2002 as follows:

	Year	Gross (RM)	Rate (%)	Amount due (RM)
D	2003	47,007.10	10	4,700.71
	2004	47,007.10	6	2,820.42
	2005	47,007.10	5	2,350.35

- E** (j) Year end and special bonus on premium income from the business done by Chua Seok Kim for the year 2002:

	Bonus	Gross(RM)	Rate(%)	Amount due(RM)
	Year-end	557,245.85	3	16,717.37
F	Special	557,245.85	1	5,572.45

- F** (k) Under the terms of the defendant's undertaking the plaintiff is entitled to and the defendant is liable to pay the plaintiff long association benefit of RM209,083.99

- G** (l) Pursuant to the said Agreement the plaintiff is entitled to and defendant is liable to pay the plaintiff

- (a) for achieving and assigned CEO quota for 2001 at 2% which works out to RM146,485.02;
- (b) for setting up an office in Petaling Utama Six, PJ since 1999 under the CEO challenge for Kuala Lumpur office allowance for a period of 3 years amounting to RM20,000.00 and
- H** (c) for office maintenance for Malacca (agency) office for the period January - June 2002 amounting to (RM5,000.00) RM30,000.00.

- I** [8] The plaintiff has also pleaded in para. 6.1 of the statement of claim and contended that it was an implied term of the contract of the defendant's engagement of the plaintiff that the plaintiff would:

- (a) occupy and continue to occupy the said position and procure and maintain clientele for the defendant and benefit from the clientele so procured; and **A**
- (b) the defendant would not terminate the plaintiff's said position save and except for serious misconduct on the part of the plaintiff and upon sufficient prior inquiry to ascertain such misconduct. **B**

[9] On the other hand, the defendant has contended that the termination of the plaintiff of both the said standard agency agreement and the district manager's agreement was pursuant to the express terms of the said agreement and is valid and lawful and the defendant's claim ought to be dismissed. It was further contended on behalf of the defendant that the plaintiff cannot import terms into the contract, where *inter alia*, it is inconsistent with the express terms of the contract relating to termination. Learned counsel for the defendant had referred to the following cases: **C**

- (a) *American International Assurance Company Ltd v. Koh Yen Bee* [2002] 4 CLJ 49 **D**
- (b) *Sababumi (Sandakan) Sdn Bhd v. Datuk Yap Pak Leong* [1998] 3 CLJ 503 **E**
- (c) *Trollope & Colls Ltd v. North West Metropolitan Regional Hospital Board* [1973] 2 All ER 260
- (d) *Yap Nyo Nyok v. Bath Pharmacy Sdn Bhd* [1993] 3 CLJ 188 **F**
- (e) *Broome v. Pardess Co-operative Society of Orange Growers Ltd* [1940] 1 All ER 603
- (f) *Tamplin (FA) Steamship Co Ltd v. Anglo-Mexican Petroleum Products Co Ltd* [1916] 2 AC 397 **G**
- (g) *In re Berker Sportcraft Limited's Agreement* [1947] 177 LT 420
- (h) *ABDA Airfreight Sdn Bhd v. Sistem Penerbangan Malaysia Bhd* [2001] 8 CLJ 1
- (i) *British & Beningtons Ltd v. North Western Chachar Tea Co Ltd* [1923] AC 48 **H**
- (j) "The Interpretation of Contracts" by Kim Lewison, 2nd edn, 1997 **I**

A [10] As agreed by both parties, the issues for determination by this court is as follows:

(i) Is the defendant's termination of the plaintiff's engagement lawful, valid and in particular and in the light of the plea in para. 6.1 of the claim;

B

(ii) If the answer is in the

(a) affirmative or

C

(b) negative

what are the entitlements that are (or ought to be) due and payable to the plaintiff in the event the termination was invalid and unlawful;

D

(iii) In particular, whether the plaintiff is entitled to payment of commission on policies, effected by him prior to his termination, continue on such policies on the renewal thereof.

[11] The statement of agreed facts are as follows:

E

STATEMENT OF AGREED FACTS

1. The defendant is a public company with limited liability, licenced under the Insurance Act to carry on and does carry on life insurance business, having an office at Ground Floor, Menara TM Asia Life, 189, Jalan Tun Razak, 50400 Kuala Lumpur.

F

2. The plaintiff and the defendant executed a Standard Agency Agreement dated 1.4.1998.

G

3. Subsequently the plaintiff was promoted and appointed as a District Manager of the defendant and an agreement dated 15.4.1999 was executed between the plaintiff and the defendant. At all material time the plaintiff was an agent and also a District Manager.

H

4. The plaintiff is entitled to commission on the policies effected by the plaintiff or agents under the plaintiff pursuant to the abovementioned Agreements.

I

5. The defendant by letter dated 11.6.2002 terminated the plaintiff's appointment under the Standard Agency Agreement as the agent of the defendant pursuant to Clause 20(a) of the Standard Agency Agreement and Clause 8 of the District Manager's Agreement with effect from 27.6.2002.

6. By notice in writing dated 26.10.2004 the plaintiff through his solicitors, Messrs SN Fam & Co demanded payment from the defendant.

7. The defendant through its solicitors' letter dated 22.11.2004 denied the plaintiff's claims. A

[12] This court finds that in order for this court to arrive at a just decision, the totality of the evidence, both oral and documentary with the pleadings must be considered, in particular, the express terms of the standard agency agreement and the district manager's agreement. It cannot be denied that insofar as the nature of the plaintiff's claim, it is important to consider the express terms and conditions as contained in the standard agency agreement and the district manager's agreement and the said notice given by the defendant to the plaintiff in respect of the termination. It is settled law that the plaintiff on whom the onus of proof lies must, in order to succeed, establish a *prima facie* case. He cannot, on failure to do so take advantage of the weakness, if there was any, of his adversary's case. The plaintiff must succeed by the strength of his own right and clearly of his own proof. B C

[13] In the present case and based on the totality of the evidence and considering the cumulative effect of the nature of the transaction carried out by the plaintiff and the correspondences between the parties, this court finds that there cannot be any implied term or terms imported into both the agreements as contended on behalf of the plaintiff. The relationship between the plaintiff and the defendant is based on the said two agreements and the parties are bound by the express terms of the said agreements which is a private contract. D E

In *Bank of Credit and Commerce International SA v. Ali* [2002] 1 AC 251, Lord Bingham of Cornhill said at p. 259: F

In construing a contractual provision, the object of the court is to give effect to what the contracting parties intended. To ascertain the intention of the parties, the court reads the terms of the contract as a whole, giving the words used in their natural and ordinary meaning in the context of the agreement, the parties' relationship and all the relevant facts surrounding transaction so far as known to the parties. To ascertain the parties' intentions the court does not of course inquire into the parties' subjective states of mind but makes an objective judgment based on the materials already identified. (see also *Investors Compensation Scheme Ltd v. West Bromwich Building Society* [1998] 1 WLR 896 at p. 912 - 913). G H

[14] On the facts and surrounding circumstances, this court finds that this is not a case where the implied terms as proposed and argued by learned counsel for the plaintiff is necessary in order to do all things required to give effect to the said agreements and neither it is an obligation implied by the law or arising out of necessity. In fact, I

A cl. 20(a) and cl. 8 of the said agreements respectively provide for the mode of terminating both the agreements and constitutes a binding agreement between the plaintiff and defendant.

B [15] In the circumstances, this court is of the considered view that on the facts in the present case, the contract does not permit any other term to be implied or imported into the contract where it is not provided in the contract. (see *Industrial & Agricultural Distributors Sdn Bhd v Golden Sands Construction Sdn Bhd* [1993] 1 LNS 96; [1993] 1 MLJ 433 at p. 442). In *Tindok Besar Estate Sdn Bhd v. Tingar Co* [1979] 1 LNS 119; [1979] 2 MLJ 229 Chang Min Tat FJ said at p. 233:

C If this contention so generally stated and understood had any foundation at law, then it would be open to any party to a litigation concerning an agreement to say that the agreement which is the subject matter of the dispute did not contain all the terms thereof and seek to introduce such terms or even terms which might not even have been within the contemplation of the other party. No agreement would then be safe from being rewritten by one party in a court of law.

D (See *Trollope & Colls Ltd v. North West Metropolitan Regional Hospital Board* [1973] 2 All ER at 267-268, *Sababumi (Sandakan) Sdn Bhd v. Datuk Yap Pak Leong* [1998] 3 CLJ 503 at 532-533, *Yap Nyo Nyok v. Bath Pharmacy Sdn Bhd* [1993] 3 CLJ 188 at 192-193, *Broome and Anor v. Pardess Co-operative Society of Orange Groves Ltd* [1940] 1 All ER 603 at 610-612, *Tamplin (FA) Steamship Co Ltd v. Anglo-American Petroleum Products Co Ltd* [1916] 2 AC 397 at 422, *Comptior Commercial Anversoil and Power, Son & Co* [1920] 1 KB 868, *Reigate v. Union Manufacturing Co (Rams-Bottom) Ltd And Elton Copdyeing Co Ltd* [1918] 1 KB 592).

E [16] On the other hand, even if the defendant had to give reasons for the termination of the said agreements which this court finds the defendant is not obliged to do so under the express terms of the said agreements, the defendant had reason or just cause for the termination as *inter alia* there was a drastic drop in the productivity and the plaintiff had not at any time given any satisfactory answer for his drastic drop in his productivity in the year 2002. Accordingly, and upon considering the warning letters dated 5 April 2002, 13 April 2002, 26 April 2002 and 30 May 2002, from the defendant to the plaintiff, and considering the reply, the termination was justified under the circumstances. In any event, as stated above, this court wishes, to reiterate that under the express terms of both the agreements, the defendant is not under any obligation to give any reason for the termination and the defendant has complied with the express terms of the said agreement when the letter of termination was issued to the plaintiff. (see *American International Assurance Company Ltd v. Koh Yen Bee* [2002] 4 CLJ 49 at 61-62, 68).

[17] In fact, the plaintiff had under cross-examination admitted to the following facts: **A**

- (a) he is entitled to the commission only after he has collected the premium from the assured / policy holders and remitted the same to the defendant. **B**
- (b) under cl. 20(a) of the standard agency agreement, the defendant has the right to give automatic termination upon giving 15 days notice.
- (c) he too can under the same clause terminate the said agreement upon giving 15 days written notice. **C**
- (d) it is written under cl. 25 that when he is terminated, all benefits and compensation are cancelled except for that is due and accrued prior to the date of termination.
- (e) it is stated in cl. 8 of the district manager's agreement that either party can terminate the agreement by giving 15 days written notice. **D**
- (f) there was an official warning from the defendant to him about his conduct.
- (g) his agency's production dropped drastically in the year 2002 and this had been highlighted by the defendant to him by letters dated 5 April 2002 and 26 April 2002 that his new business for the first three months of 2002 were extremely low when compared to the previous years. **E**
- (h) as at 31 March 2002 his direct unit had submitted only one paid - for proposal compared to seven for the same period the previous years. **F**
- (i) by the letter dated 5 April 2002, the defendant had highlighted to him that his new business for the first three months in 2002 were extremely low compared to the previous years. **G**
- (j) he did not respond to the letter dated 5 April 2002 from the defendant.
- (k) he did not respond by submitting the agency business plan for the year 2002 within seven days. **H**
- (l) the defendant had warned him by the letter dated 13 May 2002 for him to submit a comprehensive agency business plan.
- (m) despite all the requests and warnings given by the defendant, he still did not submit the business plan for the year 2002. **I**

- A** (n) the percentage of his group production's average for the years 2000 and 2001 and business activity as a percentage was drastically worse than the previous years.
- (o) he does not hold any agency appointment with the defendant as he has been terminated.
- B** (p) he has joined another life insurance company namely, Allianz on 20 November 2002.
- (q) the office maintenance allowance shall be paid on the basis of reimbursement of actual expenses incurred and that he did not submit any documents relating to office expenses for any period after March 2002.
- C** (r) the agent's job is to service the policy holders satisfactorily and to ensure that the policies are renewed each year.
- D** (s) from the date of the termination, the agent cannot service the policy holders any longer.
- (t) upon termination date, the defendant would have to transfer the policy holders to a new agent to take over and service the policy holders.
- E** (u) since an agent has left the defendant's company, the defendant will not pay any commission for subsequent renewals.
- F** (v) the commission for future renewal period are due and accrued to the agent when he actually collects the premium for that renewal period.
- G** [18] On the facts and surrounding circumstances in the present case, the law on partnership or employment contract relied on by learned counsel for the plaintiff has no basis or relevance to the present case which is based on the said standard agency agreement and district manager's agreement and the parties are bound by the express terms of the said agreements. The plaintiff's counsel had relied on the following cases, namely:
- H** (a) *Bristol & West Building Society v. Mothew* [1966] 4 All ER 698 (CA)
- (b) *Arklow Investment Ltd v. Ian Duart Maclean* [2000] 1 WLR 594, 598
- (c) *Sandhu v. Gill* [2005] EWCA CIV 1297; [2006] 2 All ER 22
- I** (d) *Malik v. BCCI* [1997] 3 All ER 1 (HL) p. 14, 15, 16-17, 18 and 19 G-J-20

[19] Be that as it may, by the letter dated 14 August 2003, the defendant had forwarded the outstanding payment, being RM235,805.51 owing to the plaintiff in respect of all the benefits and payments due and accrued to the plaintiff prior to the date of the said termination. The said letter dated 14 August 2003 reads:

Asia Life

Asia Life (M) Berhad
Head Office:
Asia Insurance Building
3rd - 5th Floor, No. 2 Jalan Raja Chulan
P.O. Box 10456, 50200 Kuala Lumpur

Our Ref : AGT/2709/8/03
Date : 14 August 2003

Mr Chong Yoon Huat
No. 61, 6/155A
57000 Bukit Jalil
Kuala Lumpur

BY HAND

Dear Sir,

Re: Mutual Settlement

1. In respect of the termination of your agency agreement, we have now computed the outstanding payment owing to you. The computation is as follows:

1.1 2001 Special CEO Challenge	- RM20,000.00
1.2 District Manager's Sales Challenge 2001	- RM146,485.02
1.3 Breakaway Benefit	- RM12,998.47
1.4 Reimbursement of Agency Office Maintenance Allowance	- RM15,000.00
1.5 Commission & Overriding	- RM45,658.52
Total	RM240,142.01
Less Recovery of Overriding on Cancellation of Policy No. IL2001017195-2	- RM4,336.50
Balance	- RM235,805.51

2. We enclose herewith our SBB KL cheque no. 039402 drawn in your favour for the said total sum.

- A** 3. If you pay in our cheque or retain it, you will thereby signify your acceptance of this offer of the cheque in full and final settlement of all claims as at 26.6.2002 that you may have against us.
4. If you do not accept this offer you must return the cheque to us without delay. This is the only way you can demonstrate that you
- B** do not accept this offer of settlement.
5. If you are agreeable, please acknowledge your acceptance of the terms and receipt of the cheque on the copy of this letter also enclosed and return the copy to us.

C Yours faithfully,
 ASIA LIFE (M) BERHAD

Signed

JACK LEE
Agency Manager

D JL/wann

[20] By a letter dated 22 February 2005, the defendant had written to the plaintiff which reads:

E Asia Life

 Asia Life (M) Berhad
 Head Office:
 Asia Insurance Building, 3rd - 5th Floors
 2 Jalan Raja Chulan, P.O. Box 10456

F 50714 Kuala Lumpur

Our Ref : AGT/0508/8/05
Date : 22 February 2005

G Mr Chong Yoon Huat
 No. 61, 6/155A
 57000 Bukit Jalil
 Kuala Lumpur

Dear Sir,

H Re: Mutual Settlement

1. We refer to our letter dated 14 August 2003 to you which enclosed our Southern Bank Berhad KL cheque no. 039402 dated 7 August 2003 drawn for the sum of RM235,805.51.
- I** 2. For our records, the cheque was not sent for collection. We are required by law to forward the monies drawn by the cheque to

the government's "Unclaimed Monies" department. Upon this happening, you shall be required to claim the monies directly from "Unclaimed Monies" and not us.

A

3. In the event you wish not to be inconvenienced by dealing with the "Unclaimed Monies" department, please contact us within 14 days of the date of this letter for a replacement cheque. Unless you do so, we are required to and shall forward the monies concerned to the "Unclaimed Monies" department.

B

Yours faithfully
ASIA LIFE (M) BERHAD

Signed

C

JACK LEE
Manager - Agency

JL/wann

D

cc Mr Chua San Kuang, Southern Regional Manager

[21] However, the plaintiff had returned the said cheque for the sum of RM235,805.51 to the defendant. As the plaintiff had returned the said cheque for the sum of RM235,805.51 to the defendant, the defendant had by letter dated 18 September 2006 forwarded the said payment to the Registrar of the Unclaimed Monies Department.

E

Letter dated 18 September 2006 reads:

Asia Life

F

Asia Life (M) Berhad
Head Office
Asia Insurance Building, 3rd - 5th Floors
2, Jalan Raja Chulan, P.O Box 10456
50714 Kuala Lumpur
Rujukan Kami : AGT/1359/5/06
Tarikh : 18 September 2006

G

Pendaftar Wang Tak Dituntut
Bahagian Pengurusan Amanah dan Sekuriti
Jabatan Akauntan Negara
Tingkat 42 Menara Maybank
100 Jalan Tun Perak
50050 Kuala Lumpur

H

I

A Tuan,

PENGESAHAN WANG TAK DITUNTUT

1. Kami ingin merujuk Tuan kepada perkara yang tersebut di atas.
- B** 2. Adalah disahkan bahawa empunya Wang Yang Tak Dituntut, Chong Yoon Huat, nombor kod 708056-A dan nombor kad pengenalan 7443167 merupakan penerima bayar kepada cek Southern Bank KL bernombor 701492 di mana wang tersebut telah diserahkan kepada Jabatan Tuan seperti berikut:

C Nama : Ketua Pengarah Lembaga Hasil Dalam Negeri

Amaun : RM235,805.51

Tahun UMA-3 diserahkan kepada Pendaftar: 2005

No Mukasurat UMA-3 : 1/1

D No. Siri UMA-3 : 1

Sekian, dimaklumkan.

Yang benar

E Tandatangan

(JACK LEE)

b.p. Asia Life (M) Berhad

F s.k. i) Messrs SN Fam & Co
Advocates & Solicitors
No. 8-1 & 2, Jalan Radin Anum
Bandar Baru Seri Petaling
57000 Kuala Lumpur
(Ref: 1-02-MS-99-3257)

G ii) Azim, Tunku Farik & Wong
Advocates & Solicitors

H [22] In the meantime, this court has been informed during the course of the trial by both parties from the Bar and the plaintiff has also admitted that he has now received the said sum of RM235,805.51 which he had previously refused to accept. This court finds that the plaintiff is only entitle to the benefits and commission that was due and accrued to him prior to the date of his termination and which was worked out to be RM235,805.51 and the same has been paid and received by the plaintiff.

I

[23] Be that as it may, this court finds that the termination of the plaintiff's agency pursuant to the standard agency agreement dated 1 April 1998 as the agent and the district manager's agreement dated 15 April 1999 is lawful and valid and it was issued in accordance with the express terms and conditions of the said standard agency agreement and the said district manager's agreement. The plaintiff is not entitled to the benefits or commission for the period after the date of the said termination. The plaintiff is also not entitled to any Long Association benefit. (see *American International Assurance Company Ltd v. Koh Yen Bee* [2002] 4 CLJ 49 at 61-62, 68). Accordingly, this court finds that on an objective evaluation of the totality of the evidence, the plaintiff has failed to establish his claim against the defendant as alleged on the balance of probabilities. The burden of proof lies on the party who substantially asserts the affirmative of the issue and not the party who denies it. In other words, the onus is on the plaintiff who makes the assertion that he is entitled to all the claims and that the same is payable pursuant to the express terms of the agreement entered into between the plaintiff and defendant. On the other hand, this court is mindful of the fact that in some cases, the burden of proof may shift depending on the facts and surrounding circumstances of the case. However, on the set of the facts and surrounding circumstances in the present case, the plaintiff has failed to establish his claim on the balance of probabilities.

[24] In the circumstances and on the totality of the evidence, this court wishes to answer the first issue

- (i) in the affirmative and that the termination of the plaintiff's engagement is lawful and valid.

[25] As for issue (iii), considering the express terms and conditions of the said agreements and for the reasons stated above, this court finds that the plaintiff is not entitled to the payment of commission on policies, effected by him prior to his termination as an agent and any other payments as the manager and to continue on such policies on the renewal thereof as he does not any longer perform his duties required of him as the agent or manager and pursuant to the express terms of the said agreements. Admittedly, the plaintiff has since joined another insurance company, namely, Allianz with effect from 20 November 2002.

[26] In the circumstances and in accordance with the rules of reason and justice, this court finds the plaintiff has failed to establish his claim against the defendant as pleaded in the statement of claim. Accordingly, the plaintiff's claim is dismissed with costs. Consequently, as agreed by both parties, the decision of this court in the present case on liability is binding on all the remaining 16 cases, namely:

- A** (a) S22-783-2005;
(b) S22-241-2006;
(c) S22-245-2006;
(d) S22-238-2006;
- B** (e) S22-235-2006;
(f) S22-236-2006;
(g) S22-233-2006;
(h) S22-232-2006;
- C** (i) S22-230-2006;
(j) S22-229-2006;
(k) S22-240-2006;
(l) S22-239-2006;
(m) S22-237-2006;
- D** (n) S22-234-2006;
(o) S22-244-2006;
(p) S22-243-2006.

E [27] Accordingly, and pursuant to the agreement of the parties, the plaintiffs' claim against the defendant in respect of the said 16 cases is dismissed with costs. The defendant is entitled to the costs of this action, either to be agreed or taxed by the Registrar of the High Court.

F

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H

I